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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/538,054   | 01/13/2006  | John Arthur Taylor   | 050290 001P2        | 8507             |
| 33805 7590 09/15/2009<br>WEGMAN, HESSLER & VANDERBURG<br>6055 ROCKSIDE WOODS BOULEVARD<br>SUITE 200<br>CLEVELAND, OH 44131 |             |                      |                     |                  |
| EXAMINER   |             |                      |                     |                  |
| PIERY, MICHAEL T   |             |                      |                     |                  |
| ART UNIT   |             | PAPER NUMBER         |                     |                  |
| 1791   |             |                      |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/538,054

**Applicant(s)**

TAYLOR ET AL.

**Examiner**

MICHAEL T. PIERY

**Art Unit**

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 4, 5, 10, 16, 18-21, 24, 25, 27, 29, 34, 35, 38, 42 and 43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 5, 10, 16, 18-21, 24, 25, 27, 29, 34, 35, 38, 42 and 43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-846)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 29, 2009 has been entered.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1, 4, 5, 10, 16, 18-21, 24, 25, 27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jenkins (US 2,482,418) in view of Vogt et al. (US 6,475,562).

Regarding claim 1, Jenkins teaches a method of making a garment material including providing a substrate and a coagulant, applying a layer of a polymeric material to the substrate, allowing for the coagulant to coagulate some of the foam for a controlled period so that an underside of the layer of foam polymeric material coagulates to form a coagulated foam layer and an outer part of the foam layer does not coagulate and forms an uncoagulated foam layer (column 7, lines 57-65); and removing the uncoagulated layer from the substrate to leave a cohesive porous breathable coagulated layer on the substrate (column 5, lines 3-38). Jenkins does not explicitly teach the layer of polymeric material is applied as a foam. However, Vogt teaches it is well-known to use foam material in the formation of polymeric garments (column 3, lines 10-12). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the process of Jenkins to include the foam material of Vogt because using foamed material allows for better control of the rate and uniformity of the coagulation process than unfoamed material (column 3, lines 28-32). Jenkins does not explicitly teach the claimed water absorbency. However, since the modified Jenkins reference teaches the claimed process steps, the examiner interprets the product possesses the claimed moisture absorbency. Alternatively, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the controlled time to achieve the desired moisture absorbency since it has

been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges is within routine skill in the art (MPEP 2144.05 II-A).

Regarding claim 4, Jenkins teaches removing the uncoagulated polymer by directing fluid at the substrate (column 2, lines 25-28).

Regarding claim 5, Jenkins teaches the fluid is a liquid (column 5, lines 25-28).

Regarding claim 10, Jenkins does not explicitly teach the fluid is a gas. However, Jenkins teaches using fluid (water) to remove uncoagulated polymer from the substrate (column 5, lines 25-28) and it would have been obvious to one of ordinary skill in the art at the time of the invention to use gas since air and liquid are both equivalent fluids used in removal processes and substitution of known equivalents is within routine skill of one in the art (MPEP 2144.06).

Regarding claim 16, Jenkins teaches immersing the substrate in a liquid to remove uncoagulated polymer (column 5, lines 30-32).

Regarding claims 18, 19 and 29, Jenkins does not explicitly teach using a nylon substrate. However, Vogt teaches it is known to use nylon as the substrate (column 6, lines 32-33). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the process of Jenkins to use nylon as the substrate on the form because latex-textile composites are relatively inexpensive to make, improve aesthetics and are desirable in the industry (column 2, lines 24-30). Vogt also teaches using nylon blends (column 6, lines 28-37). The examiner submits nylon/lycra blends are well-known substrates used in garment manufacture and it would have been obvious to use the nylon/lycra blend rather than nylon based on the desired final properties of the garment.

Regarding claim 20, Jenkins teaches immersing the substrate in water after removing the uncoagulated layer (column 5, line 35).

Regarding claim 21, Jenkins teaches drying the substrate (column 5, lines 39-41).

Regarding claims 24 and 25, Jenkins teaches the coagulant is an aqueous/alcoholic solution of one or more electrolytes (column 7, lines 42-47).

Regarding claim 27, Jenkins teaches the polymeric material is latex (column 1, line 6).

4. Claims 34, 35, 38, 42, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jenkins (US 2,482,418) in view of Vogt et al. (US 6,475,562) as applied above to claim 1, further in view of Halley et al. (US 2002/0197924).

The modified Jenkins reference teaches the method of claim 1, as applied above.

Regarding claim 34, Jenkins does not explicitly teach applying an array of discrete areas to the layer of coagulated material. However, Halley teaches it is known to coat garments with a polymeric material in a discrete array (Paragraph 0019). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the process of Jenkins to include a polymeric array because coating provides wear resistance (Paragraph 0019), a desired property of garments.

Regarding claim 35, Jenkins does not explicitly teach providing dressing the garment on an array former. However, Halley teaches providing an array former, dressing the garment on the array former then applying the coating (Paragraph 0037) then curing the coating and stripping the garment material from the former (Paragraph 0038). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the process of Jenkins to

include a polymeric array because coating provides wear resistance (Paragraph 0019), a desired property of garments.

Regarding claim 38, Jenkins does not explicitly teach the coating is polyurethane latex. Halley teaches using polyurethane, but not explicitly polyurethane latex. However, it would have been obvious to one of ordinary skill in the art at the time of the invention use a polyurethane latex since both polyurethane and polyurethane latex exhibit desirable properties such as wear resistance and hydrophobicity.

Regarding claim 42, Jenkins does not explicitly teach the array comprises an array of dots. However, Halley teaches the array comprises dots (Paragraph 0019). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the process of Jenkins to include a polymeric array because coating provides wear resistance (Paragraph 0019), a desired property of garments.

Regarding claim 43, Jenkins does not explicitly teach the array comprises an array of dots and strengthening patches. However, Halley teaches an array of dots (Paragraph 0019), and the examiner interprets that the dots inherently provide increased strength to the garments. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the process of Jenkins to include a polymeric array because coating provides wear resistance (Paragraph 0019), a desired property of garments.

### ***Response to Arguments***

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL T. PIERY whose telephone number is (571)270-5047. The examiner can normally be reached on M-Th 8:30-7.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael T Piery/  
Examiner, Art Unit 1791

/Monica A Huson/  
Primary Examiner, Art Unit 1791